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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,670	01/05/2006	Thomas Gore	I-2002.025 US	4798
31846 7590 02/19/2008 INTERVET INC. PATENT DEPARTMENT PO BOX 318 MILLSBORO, DE 19966-0318				
EXAMINER				
HURT, SHARON L				
ART UNIT		PAPER NUMBER		
1648				
MAIL DATE		DELIVERY MODE		
02/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,670

Applicant(s)

GORE ET AL.

Examiner

SHARON HURT

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

Claims 28-42 are pending and under examination. Claims 1-27 have been cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejection of claims 28, 30 and 32 under 35 U.S.C. 103(a) as being unpatentable over Appel et al. (4,193,990) and Appel et al. (4,193, 991) in view of Pratelli et al. (Journal of Veterinary Diagnostic Investigation, 1999, Vol. 11, pages 365-367) **is maintained**.

Response to Arguments

Applicant's arguments filed November 19, 2007 have been fully considered but they are not persuasive. Applicants argue "MVC is a totally different virus than CPV-2." Applicants argue "There is a clear genetic difference between MVC/CPV-1 and CPV-2." Applicants also argue that "prior to Applicant's invention, no MVC vaccines were available. Hence, it is unreasonable to expect that MVC can be made into a vaccine simply because vaccines exist for CPV-2." Applicants further argue "The fact that canines have been naturally afflicted by MVC and have antibodies to this virus does not anticipate or render obvious Applicants' vaccine."

Claims 28, 30 and 32 are drawn to a vaccine comprising MVC, a.k.a. CPV-1, wherein the MCV is inactivated or attenuated live. The differences between CPV-1 and CPV-2 are well documented in the art. Appel et al. teaches a vaccine against CPV comprising modified live or

inactivated MVC, a.k.a. CPV-1. Therefore, Appel teaches a MVC vaccine a.k.a. CPV vaccine. Pratelli et al. teaches antibodies to CPV-1 are found in dogs with CPV-1 infection. The combination of references teaches the limitations of the instant invention. It would have been *prima facie* obvious to the person of ordinary skill in the art at the time the invention was made to make a vaccine against CPV-1 for dogs. The person of ordinary skill in the art would have been motivated to make the vaccine because Appel teaches a vaccine comprising CPV, and reasonably would have expected success because the vaccine taught by Appel protected the dogs upon challenge with CPV.

The rejection of claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appel et al. (4,193,990) and Appel et al. (4,193,991) in view of Pratelli et al. as applied to claims 28, 30 and 32 above, and further in view of Audonnet et al. (US Patent No. 6,159,477, Dec. 2000) **is maintained.**

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicants argue "none of the references teach or suggest the claimed MVC vaccine". Applicants also argue "CPV-2 has been widely studied to the point where numerous vaccines are on the market." Applicants further argue "prior to Applicants' invention, no MVC vaccines were available."

These arguments have been addressed supra.

The rejection of claims 28-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appel et al. (4,193,990) and Appel et al. (4,193,991) in view of Pratelli et al. and Audonnet et al. as applied to claims 28-33 above, and further in view of Poulet et al. (Veterinary Record,

2001, Vol. 148, No. 22, pages 691-695) and Correa (Alabama Cooperative Extension System, November 2002, 7 pages) is **maintained**.

Response to Arguments

Applicant's arguments are the same remarks as listed above and they are not persuasive. Applicants arguments have been addressed supra. The references do teach a MVC vaccine a.k.a. CPV vaccine.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON HURT whose telephone number is (571)272-3334. The examiner can normally be reached on M-F 8:00 - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharon Hurt

February 12, 2008

/Bruce Campell/

Supervisory Patent Examiner, Art Unit 1648